

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

KENNETH GALE LEBERTA,
Petitioner,

VS.

NATHANIEL QUARTERMAN, Director,
T.D.C.J., Correctional
Institutions DIV.,
Respondent.

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CIVIL ACTION NO. 4:06-CV-353-Y

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS
(With special instructions to the clerk of Court)

In this action brought by petitioner Kenneth Gale Leberta under 28 U.S.C. § 2254, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on October 30, 2006; and
3. The Petitioner's written objections to the proposed findings, conclusions and recommendation of the United States magistrate judge filed on November 20, 2006.

The Court, after de novo review, concludes that Petitioner's objections must be overruled, and that the petition for writ of habeas corpus should be dismissed with prejudice as time-barred under 28 U.S.C. § 2244, for the reasons stated in the magistrate judge's findings and conclusions.

The Court notes that although Leberta presented for filing a 28-page memorandum in support at the time of the filing of the petition, which was reviewed and considered by the magistrate judge, the document was never file-stamped.¹ The clerk of Court

¹Leberta also filed a motion for leave, which motion was granted to the extent attachments submitted therewith were construed as a supplement to the petition. (May 26, 2006, Order-docket no.3.) Perhaps the staff of the clerk of Court thought the motion for leave was as to the filing of the memorandum. But

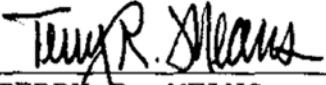
will be directed to file-stamp the original and copies of the memorandum in support *nunc pro tunc* as of the date of filing of the petition.

Therefore, the findings, conclusions, and recommendation of the magistrate judge are ADOPTED.

Petitioner Kenneth Gale Lebertha's petition for writ of habeas corpus is DISMISSED WITH PREJUDICE.

The clerk of Court is directed to file stamp the original and copies of the 28-page memorandum in support *nunc pro tunc* as of the May 24, 2006, filing of the petition, and note this on the docket.

SIGNED November 28, 2006.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

no permission was required to file the memorandum in support.